

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments)	MB Docket No. 05-144
FM Broadcast Stations.)	RM-11189
(Dalhart and Perryton, Texas))	
)	
)	
)	

**NOTICE OF PROPOSED RULE MAKING
AND
ORDER TO SHOW CAUSE**

Adopted: March 21, 2005

Released: March 23, 2005

Comment Date: May 10, 2005

Reply Comment Date: May 25, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rulemaking filed by Radio Dalhart ("Petitioner"), licensee of Station KXIT-FM, Channel 242C1, Dalhart, Texas. The petition requests the substitution of Channel 241C1 for Channel 242C1 at Dalhart and the modification of the license for Station KXIT-FM to specify operation on Channel 241C1. To accommodate this channel change, the Petitioner requests the substitution of Channel 248C3 for Channel 241C3 at Perryton, Texas, and the modification of the license for Station KEYE-FM to specify operation on Channel 248C3 in lieu of Channel 241C3. The Petitioner states that it will promptly apply for and construct facilities on the channel it has requested, if allotted.

2. In support of its proposal, the Petitioner alleges that these changes will enable Station KXIT-FM to increase substantially its service. Specifically, the Petitioner contends that there will be a net gain of 55 percent population within Station KXIT-FM's 60 dBu contour from 33,284 to 51,645 persons and that there will be no loss area. The Petitioner further argues that the proposed changes will enable Station KEYE-FM to continue operation from its currently licensed site.

3. The proposal warrants consideration because the requested channel change could increase substantially the service area for Station KXIT-FM. Although the Petitioner contends that there will be no loss of service caused by the channel change,¹ our staff engineering analysis reveals that there will be a loss of service to 255 persons within 1,748 square kilometers, who will be reduced from two to one

¹The Petitioner's engineering study of the gain and loss areas appears to take into account terrain factors. However, in allotment proceedings, the appropriate comparison is the omni-directional, 60 dBu contours of the existing and proposed channels at maximum facilities for the station classes involved. See *Greenup, Kentucky and Athens, Ohio*, 6 FCC Rcd 1493 (1991) ("*Greenup*").

aural services, thereby creating a “gray” area.² However, the staff engineering analysis further shows that there will be a gain of service to 14,160 persons, for a net gain of service to 13,905 people, and that 98 persons currently within a “gray” area would receive a second aural service. Comment is solicited on the impact that the creation of “gray” area within the loss area, as well as the service to “gray” area within the gain area, have on this proposal and whether the numbers within these gray areas are *de minimus*.³ The Petitioner is also invited to provide updated figures on the number of people in the gain and loss areas and the numbers of fulltime aural services available to these people, using the standards set forth in our *Greenup* decision.

4. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefiting party, or parties, to reimburse the affected station for costs incurred.⁴ The Petitioner has stated its willingness to reimburse Perryton Radio, Inc., the licensee of Station KEYE-FM, Perryton, Texas, for the reasonable costs associated with changing to Channel 248C3.

5. The proposal complies with the Commission’s technical rules. Channel 241C1 can be allotted at the Petitioner’s specified site, which is located 34.7 kilometers southeast of Dalhart, Texas. The reference coordinates for this site are 35-48-23 and 102-17-16. Channel 248C3 can be allotted at Station KEYE-FM’s existing site with reference coordinates of 36-21-54 and 100-46-48.

6. Accordingly, we seek comment on the proposed amendments of the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, for the communities listed below, to read as follows:

<u>Communities</u>	<u>Present</u>	<u>Proposed</u>
Dalhart, Texas	242C1, 261C	241C1, 261C
Perryton, Texas	241C3	248C

7. We also propose to modify the Petitioner’s license for Station KXIT-FM to specify operation on Channel 241C1 without entertaining competing expressions of interest because the procedures of Section 1.420(g) do not apply to equivalent class channels.⁵

8. Pursuant to 47 C.F.R. Section 1.87, Perryton Radio, Inc., may, no later than May 10, 2005, file a written statement showing with particularity why its respective license should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Perryton Radio, Inc. to furnish additional information. If the licensee raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, Perryton Radio, Inc., will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

² A “gray area” is an area in which there is only one full-time aural reception service; a “white area” is an area in which there are no full-time aural reception services. See *Cheyenne, Wyoming, and Gerring, Nebraska*, 15 FCC Rcd 7528, 7530 (MMB 2000).

³ See *Seabrook, Huntsville, Bryan, et al., Texas*, 10 FCC Rcd 9360 (1995).

⁴ See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

⁵ See, e.g., *Stamping Ground and Nicholasville, Kentucky*, 11 FCC Rcd 13180 (MMB 1996); and *Reynoldsville, Pennsylvania*, 11 FCC Rcd 12715 (MMB 1996).

9. IT IS FURTHER ORDERED, That a copy of this *Notice of Proposed Rule Making and Order to Show Cause*, be sent by Certified Mail, Return Receipt Requested, to the following:

Perryton Radio, Inc.
7430 Colshire #4
McLean, VA 22102

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

11. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 10, 2005, and reply comments on or before May 25, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Peter Gutmann, Esq.
Womble, Carlyle Sandridge & Rice, PLLC
1401 I Street, N.W.
Seventh Floor
Washington, DC 20005
(Counsel for Radio Dalhart)

12. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁶ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,

⁶ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

see 44 U.S.C. 3506(c)(4).

14. For further information concerning a proceeding listed above, contact Andrew J. Rhodes, Media Bureau (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.

